



# STATE OF INDIANA

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June 3, 2015

Mr. Brent A. Snow  
6159 West 100 South  
Tipton, Indiana 46072

*Re: Formal Complaint 15-FC-151; Alleged Violation of the Open Door Law by  
the Tipton County Board of Commissioners; Tipton County Council*

Dear Mr. Snow,

This advisory opinion is in response to your formal complaint alleging the Tipton County Board of Commissioners and the Tipton County Council violated the Open Door Law ("ODL"), Ind. Code § 5-14-1.5-1 *et. seq.* The Council has responded via Counsel, Mr. Mark R. Regnier, Esq. His response is enclosed for your review. Pursuant to Ind. Code § 5-14-5-10, I issue the following opinion to your formal complaint received by the Office of the Public Access Counselor on May 4, 2015.

## **BACKGROUND**

Your complaint dated May 1, 2015 alleges a violation of the Open Door Law by the Tipton County Board of Commissioners ("Board") and the Tipton County Council ("Council"). The complaint alleges the Board improperly convened a special meeting of the county executive on April 30, 2015. You contend the meeting was a special meeting departing from the regularly scheduled time. The purpose of the meeting was to review the county budget.

However, you contend the subject of the meeting was improper. You note members of the Council and Board were asked to commit to financial support for the "trails" project and since the requests were not sent until thirty-six (36) hours before the meeting, it was not an item intended to be discussed when the meeting was called and noticed.

Counsel for both governing bodies responded to your complaint on May 20, 2015. Counsel does not find an ODL issue because the meeting was properly noticed to the public. Likewise, counsel does not consider the notice a violation of Ind. Code § 36-5-5-8 because notice was given to the members of the board. Ind. Code § 36-5-5-8 also

prevents conduct of unrelated business at the special session. Counsel contends the request for support for the trails project falls within the definition of the budget matters.

### **ANALYSIS**

In order for the public to be fully informed, it is the intent of the Open Door Law (ODL) that the official action of public agencies be conducted and taken openly, unless otherwise expressly provided by statute. *See* Ind. Code § 5-14-1.5-1. Accordingly, except as provided in section 6.1 of the ODL, all meetings of the governing bodies of public agencies must be open at all times for the purpose of permitting members of the public to observe and record them. *See* Ind. Code § 5-14-1.5-3(a).

In regard to a County Executive (Board of Commissioners) calling a meeting which deviates from its regularly scheduled meeting time, Ind. Code § 36-2-2-8 states:

An officer calling a special meeting of the executive shall give at least six (6) days notice of the meeting unless the meeting is called to deal with an emergency under IC 5-14-1.5-5. The notice must include a specific statement of the purpose of the meeting, and the executive may not conduct any unrelated business at the meeting.

The timeliness requirement of the notice appears to have been met. Counsel contends the supplemental notice only applies to notification of board members. However, I am not aware of any authority supporting that claim. A plain reading of the statute suggests the Board of Commissioners must not deviate from the stated purpose of the meeting described in the notice and that the notice is for the benefit of the public at large. While there is no restriction on the subject matter which may be discussed, the Board ostensibly must stay on topic.

Even though Ind. Code § 36-2-2-8 is not strictly a public access law, Ind. Code § 5-14-4-3 puts the issue within the purview of the Public Access Counselor, as the main issue is notice to the public. The section refers to the county executive, so this opinion will focus on the Board of County Commissioners and not the Council -which is the legislative body of the county.

The published notice stated the meeting was to “review the current budget.” The Commissioners went on to discuss a DNR trails project and then, voted to contribute money to its grant application and to send a letter of support. While the term “to review the current budget” is somewhat ambiguous, discussing the trails project and voting on expenditures goes outside reviewing the current existing budget.

### **CONCLUSION**

Based on the foregoing, it is the Opinion of the Public Access Counselor the Tipton County Board of Commissioners has violated the Open Door Law.

Regards,

A handwritten signature in black ink, appearing to be 'LHB', with a long, sweeping underline.

Luke H. Britt  
Public Access Counselor

Cc: Mr. Mark R. Regnier, Esq.